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September 23, 2002

Mr. James Connaughton, Chair  
Council on Environmental Quality  
NEPA Task Force  
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Subject: NEPA Task Force Activities – Federal Register Published July 9 & August 20, 2002

Dear Mr. Connaughton:

This letter is in response to the request for public comment on the National Environmental Policy Act (NEPA) task force (Task Force), and the proposed nature & scope of task Force activities. (published in the Federal Register on July 9 & August 20, 2002.

I am writing on behalf of Associated Oregon Loggers, Inc. (AOL), which represents more than 1,000 logging and allied forest business member companies. These companies play a major role in the management of public and private forests throughout Oregon. These Oregon forest professionals employ more than 10,000 workers in the continuous improvement of operations and forest technology for the sound management of the state's abundant and renewable forest resources.

We strongly encourage the NEPA Task Force "to improve and modernize" the now-ineffective and outdated NEPA procedures and regulations. In particular, the Forest Service and BLM efforts to conduct forest land & resource management actions are completely stifled by the existing practices and procedures. CEQ should simplify and clarify NEPA policy, so it focuses on the major environmental, financial, and social needs of managing the land.

A revised NEPA policy is an important step in the right direction for sustainable federal land management, protection of natural resource values, and protection of rural communities and their economies. Under the current NEPA regulations, federal lands have become non-sustainable. This is unacceptable for AOL businesses and the rural communities in which we live.

Many NEPA lawsuits have been based on alleged violations of CEQ regulations. Current regulations are ineffective in that they confound project planning with lawsuit targets, such as impossible procedures, excessive contradictory documentation, and an expectation for endless analyses. When CEQ attempts to reduce the complexities within its regulations through the use of 'guidance documents,' these documents lack the force of law, and have been ignored by the courts.

Below you will find AOL's specific comments for which we urge your consideration.

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Categorical Exclusions

- ❑ Refine the criteria to make a more explicit and narrow set of situations that a Categorical Exclusion (CE) would not be used. The CE should be a more useful tool to make NEPA documentation efficient.
- ❑ Eliminate vague references to “controversial”, as a reason to not use a CE.
- ❑ Define an objective list of criterion for agency use in determining project eligibility for CE.

Time Limits

- ❑ CEQ provides rules that set explicit time limits for NEPA document completion—either by category of document (programmatic EIS, project EIS, project EA, tiered EA, etc.) or by type of action.

Emergencies

- ❑ CEQ should define streamline procedures for managers to decide when a situation warrants ‘emergency’ treatment. Alternative NEPA compliance procedures should apply to expedite timely federal actions in emergency situations. (Current emergency provisions are so unwieldy that they are completely ineffective.)
- ❑ Expand CEQ’s emergency provisions to include any situation where delay would result in failure to accomplish important action in a timely manner—such that environmental, economic and/or social consequences would become unacceptable from defined catastrophic events (wildfires, storms, pest or disease outbreaks, floods, geologic eruptions, etc.)

New Data—Supplemental Documentation

- ❑ Narrow the definition of “new information”, which would require a supplemental NEPA document. Avoid unreasonable interruptions of projects, or their planning, because of some so-called “new” information that anyone could allege to be important to the outcome.
- ❑ Create a two-step process for agencies to decide whether supplemental NEPA is required: 1)define a reliability threshold; and 2)define a stop action threshold.
- ❑ A reliability threshold would demand four findings prior to a Supplemental EIS: a)peer-reviewed and/or professionally-accepted science basis for the new information; b)materially greater harm to the environment; c)agency lacks authority to modify/mitigate the new harm; and d)outcome benefit/value exceeds the cost of the delay & preparation of the Supplemental NEPA.
- ❑ A stop action threshold would demand three findings prior to halting the action during documentation: a)irreparable harm before Supplemental NEPA done; and b)alternative means to mitigate the new harm would be more cost-effective; and c)only the affected portions of the project must be halted during Supplemental NEPA completion.

Programmatic EIS

- ❑ Programmatic EISs are needed only on programs which the courts recognize as federal actions subject to judicial review. Broad planning documents/policies should not be subject to NEPA documentation.
- ❑ CEQ should require agencies to have no more than one layer of programmatic NEPA documentation above the project level.

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Tiering

- ❑ Opportunity for efficiency here: Require that no more than two NEPA documents be applicable to a single federal project or action.
- ❑ An EA for any project subject to a programmatic NEPA document should not have to be a “stand-alone” decision. There should be no need to repeat analyses redundantly.
- ❑ NEPA documents/decisions should be afforded a reasonable period of sufficiency after their completion.

EIS Contents

- ❑ CEQ should give guidance on how much analysis is enough in NEPA documents.
- ❑ Eliminate required analysis of ‘connected actions’ and ‘cumulative effects.’
- ❑ CEQ should define reasonable geographic scope of the effects analyses in NEPA documents.

Environmental Assessments

- ❑ NEPA does not necessarily require preparation of EAs. In all but a few exceptions, a simple Finding of No Significant Impact (FONSI) would be sufficient. Please do away with the requirement for an EA for every project!
- ❑ Those few exceptions that are defined as requiring an EA, should be subject to the following:
  1. Vastly simplified contents, unlike the current EA and EIS.
  2. More brevity than current EAs.
  3. CEQ-defined limits to appropriate types of analyses in EAs.
- ❑ Define that EAs be made available to the public; but that public input is explicitly not required.
- ❑ Clearly define criterion for why an EIS or EA is unnecessary –and when a FONSI would be sufficient.
- ❑ CEQ define complete direction for the contents of a FONSI.

We appreciate your efforts reduce the procedural gridlock spawned by NEPA regulations – which prevents Forest Service and BLM managers from responsibly caring for federal forests. Our public forests no longer provide the benefits and commodities expected by Americans. Managers must be able to conduct projects to resolve forest health problems, protect neighboring private property from catastrophic fire-pests-diseases on federal lands, improve forest conditions for wildlife and fish, and improve recreation opportunities. Managers cannot today do this.

In closing, AOL supports NEPA Task Force efforts “to improve and modernize” the now-ineffective and outdated NEPA procedures and regulations. We look forward to the day when NEPA procedures benefit land and resource management, rather than being an insurmountable barrier to science-based decisions of resource professionals.

Sincerely,

**Rex D. Storm**

Rex D. Storm, Certified Forester  
Forest Policy Manager  
Associated Oregon Loggers, Inc.